

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF PURCHASE PUBLIC)
SERVICE CORPORATION AND MARSHALL)
COUNTY ENVIRONMENTAL SERVICES, LLC TO)
APPROVE THE TRANSFER OF OWNERSHIP)
AND CONTROL OF THE GOLDEN ACRES) CASE NO. 2012-00436
SUBDIVISION AND GREAT OAKS SUBDIVISION)
WASTEWATER TREATMENT FACILITIES TO)
MARSHALL COUNTY ENVIRONMENTAL)
SERVICES, LLC)

ORDER

Purchase Public Service Corporation ("PPSC") and Marshall County Environmental Services, LLC ("Environmental Services") have applied for approval of the transfer of ownership and control of two sewage utilities from PPSC to Environmental Services. Having reviewed the application and being otherwise advised, the Commission finds that:

1. PPSC is a non-profit corporation that was organized pursuant to KRS Chapter 273 "[t]o provide for the proper and orderly operation, maintenance, expansion, and construction of infrastructure facilities throughout the eight-county Purchase area."¹
2. PPSC owns sewage treatment and collection facilities that serve the Golden Acres Subdivision in Marshall County, Kentucky, and the Great Oaks Subdivision in McCracken County, Kentucky. It also owns sewage treatment and

¹ Articles of Incorporation of Purchase Public Service Corp. at 1-2.

collection facilities that serve the Blandville West Estates Subdivision in McCracken County, Kentucky²

3. PPSC acquired ownership of the sewage treatment and collection facilities that serve the Golden Acres Subdivision in 1991.³

4. PPSC acquired ownership of the sewage treatment and collection facilities that serve the Great Oaks Subdivision in 1993.⁴

5. The facilities that serve the Great Oaks Subdivision consist of a 70,000-gallon extended-aeration sewage treatment plant, one pumping station, and 12,985 linear feet of polyvinyl chloride ("PVC") sewer main. As of December 31, 2011, the facilities served 163 customers.⁵

6. For the calendar year ending December 31, 2011, PPSC reported that the Great Oaks Subdivision facilities generated total sewage service revenues of \$57,886 and total operating expenses of \$43,942.⁶

² PPSC has recently divested itself of ownership of three sewage treatment and collection facilities that served subdivisions in Graves County, Kentucky. See Case No. 2012-00212, Application of Purchase Public Service Corporation For an Order Approving a Transfer of Ownership and Control (Ky. PSC July 23, 2012).

³ See Case No. 90-189, *Investigation of Cardinal Utilities, Inc.; Lorraine P. Kimbrell; and Steve Pope* (Ky. PSC May 10, 1991).

⁴ See Case No. 93-205, *The Joint Application of Great Oaks Sanitation, Inc. and Purchase Public Service Corporation, a Kentucky Corporation, for Approval of a "Real Estate Purchase Agreement" Providing for the Transfer by Great Oaks Sanitation, Inc. of a Wastewater Treatment Plant Servicing the Great Oaks Subdivision in McCracken County, Kentucky, to Purchase Public Service Corporation* (Ky. PSC July 13, 1993).

⁵ *Annual Report of Purchase Public Service Company d/b/a Great Oaks Subdivision to the Public Service Commission for the Calendar Year Ended December 31, 2011 ("Great Oaks Annual Report")* at 8, 11-12.

⁶ *Id.* at 8.

7. For the calendar year ending December 31, 2011, PPSC reported that the Great Oaks Subdivision facilities had net utility plant of \$4,380.⁷

8. For the calendar year ending December 31, 2011, PPSC reported that the Great Oaks Subdivision facilities had total assets of \$71,417⁸ and total liabilities of \$33,647.⁹

9. The facilities that serve Golden Acres Subdivision consist of a 25,000-gallon sewage treatment plant, one pumping station, and 3,976 linear feet of clay sewer main. As of December 31, 2011, the facilities served 31 customers.¹⁰

10. PPSC currently contracts with Calvert City, a city of the fourth class,¹¹ for Calvert City to operate the Golden Acres Subdivision facilities.¹²

11. PPSC currently has a contract with the Paducah-McCracken County Joint Sewer Agency, for the Joint Sewer Agency to operate the Great Oaks Subdivision facilities.¹³

⁷ *Id.* at 4.

⁸ *Id.* at 2.

⁹ *Id.* at 3. This amount does not include contributions in aid of construction of \$37,770.

¹⁰ *Annual Report of Purchase Public Service Company d/b/a Cardinal Group to the Public Service Commission for the Calendar Year Ended December 31, 2011* ("Cardinal Group Annual Report") at 11-12. When submitting its annual financial and statistical report as 807 KAR 5:006, Section 3, requires, PPSC submits a combined report on the facilities that serve the subdivisions of Holifield Heights, Golden Acres, and Blandville West. These facilities are located in different counties. Each could be treated as a separate entity. PPSC submits a combined report because these facilities were acquired at the same time from Cardinal Utilities, Inc. and originally operated as a single business operation known as its "Cardinal Group." See Case No. 90-189, *Investigation of Cardinal Utilities, Inc.; Lorraine P. Kimbrell; and Steve Pope* (Ky. PSC May 10, 1991). Accordingly, the Commission lacks information that addresses solely the operation of the sewer facilities serving Golden Acres.

¹¹ KRS 81.010(4).

¹² App. Ex. D.

¹³ *Id.*

12. On June 1, 2012, Calvert City unilaterally increased its charge to operate the Golden Acres Subdivision facilities approximately 113 percent.¹⁴

13. Environmental Services is a limited liability company that is organized pursuant to KRS Chapter 275. It was created on May 15, 2012.¹⁵

14. Environmental Services' members are William Allen Artis and Michelle Artis.¹⁶

15. William Allen Artis currently holds Class III Wastewater Treatment Certificate and a Class II Wastewater Distribution Certificate.¹⁷

16. William Allen Artis was employed for 10 years as a wastewater treatment plant operator for the Paducah-McCracken County Joint Sewer Agency. Since July 2009 he has been employed as manager of Marshall County Sanitation District No. 2's wastewater treatment facility. In addition to these facilities, he serves as the certified wastewater treatment plant operator for six wastewater treatment plants.¹⁸

17. Michelle Artis currently holds Class I Wastewater Treatment Certificate.¹⁹

18. PPSC and Environmental Services have reached a tentative agreement for the transfer of ownership and control of the sewage treatment and collection facilities

¹⁴ App. ¶ 3a.

¹⁵ App. Ex. B.

¹⁶ See Unanimous Consent of the Members of Marshall County Environmental Services, LLC (Aug. 29, 2012) (found at App. Ex. D).

¹⁷ See http://dep.gateway.ky.gov/eSearch/Search_License_Detail.aspx?AgencyID=25938 (last visited Nov. 2, 2012).

¹⁸ App. Ex. E.

¹⁹ See http://dep.gateway.ky.gov/eSearch/Search_License_Detail.aspx?AgencyID=104524 (last visited Nov. 2, 2012).

that serve the Golden Acres and Great Oaks Subdivisions.²⁰ This agreement provides that upon Commission approval, PPSC will transfer all personal and real property that it owns and is currently used in the operation of the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions. It does not provide for Environmental Services to make any payment to PPSC for the facilities.

18. Upon Environmental Services' acquisition of control and ownership of the sewage treatment and collection facilities in question, Environmental Services will operate the facilities and will no longer contract for operation and management services from Calvert City or the Paducah-McCracken County Joint Sewer Agency.

19. Environmental Services intends to maintain the current rates for service for customers of the sewage treatment and collection facilities that serve the Golden Acres Subdivision after the transfer of control and ownership occurs.

CONCLUSIONS OF LAW

Based upon the findings set forth above, the Commission makes the following conclusions of law:

1. PPSC is a utility subject to Commission jurisdiction.²¹
2. Environmental Services is a limited liability company.
3. PPSC and Environmental Services are "persons" for purposes of KRS Chapter 278.²²
4. KRS 278.020(5) provides that "[n]o person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the

²⁰ App. Ex. C.

²¹ KRS 278.010(3)(f).

²² KRS 278.010(2).

commission ... without prior approval by the commission.” As PPSC and Environmental Services are persons and are either acquiring or transferring ownership of the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions, this statute is applicable to and requires Commission approval of the proposed transfer.

5. KRS 278.020(6) provides that “[n]o individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an ‘acquirer’), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission.” As Environmental Services is a person and an entity and is acquiring control of PPSC’s utility operations through the acquisition of the facilities that PPSC uses to provide utility service, this statute is applicable to the proposed transfer and requires Commission approval of that transfer.

6. Upon compliance with the conditions set forth in Ordering Paragraph 2, Environmental Services will have demonstrated sufficient financial integrity to ensure the continuity of utility service.

7. Upon compliance with the conditions set forth in Ordering Paragraph 2, Environmental Services will have demonstrated the financial, technical, and managerial abilities to provide reasonable service to PPSC’s present customers.

8. The proposed transfer is in accordance with law and for a proper purpose.

9. The transfer of control and ownership of the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions will be consistent with the public interest only upon the condition that:

a. At the time of transfer of ownership and control of the facilities in question, PPSC refund any customer deposits that it currently holds from those facilities' customers.

b. Environmental Services obtain an irrevocable letter of credit in the amount of \$10,000 with a minimum term of 10 years and made payable to the receiver appointed by Franklin Circuit Court in the event that the Commission finds that Environmental Services has abandoned the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions and brings an action pursuant to KRS 278.021 for the appointment of such receiver.

c. Within 60 days of the date of this Order, Environmental Services file a copy of such letter of credit with the Commission.

10. Upon completion of the proposed transfer of ownership and control of the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions, Environmental Services will be a utility subject to the Commission's jurisdiction.

11. By virtue of its ownership of sewage treatment and collection facilities that serve the Blandville West Estates Subdivision, PPSC will remain a utility subject to the Commission's jurisdiction following the completion of the proposed transfer.

IT IS THEREFORE ORDERED that:

1. The proposed transfer of the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions from PPSC to Environmental Services is approved subject to the conditions set forth below:

a. At the time of transfer of ownership and control of the facilities in question, PPSC shall refund any customer deposits that it currently holds from those facilities' customers.

b. Within 60 days of the date of this Order, Environmental Services shall obtain and file with the Commission an irrevocable letter of credit in the amount of \$10,000 with a minimum term of 10 years and payable to the receiver appointed by Franklin Circuit Court in the event that the Commission finds that Environmental Services has abandoned the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions and brings an action pursuant to KRS 278.021 for the appointment of such receiver.

2. PPSC and Environmental Services shall notify the Commission in writing of the transfer of assets within 10 days of the transfer's occurrence.

3. Within 10 days of the completion of the proposed transfer, Environmental Services shall file a signed and dated adoption notice with the Commission in accordance with 807 KAR 5:011, Section 11.

4. Within 10 days of the filing of its adoption notice, Environmental Services shall issue and file a tariff with the Commission in its own name, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in 807 KAR 5:011, Sections 2 through 5, with proper identifying designation.

5. Within 30 days of the date of this Order, Environmental Services shall file with the Commission the journal entry that it proposes to record the asset acquisition. The acquisition shall be recorded in accordance with the Uniform System of Accounts.

6. PPSC shall be responsible for submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, for that period in 2012 in which it owns and operates the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions.

7. If the transfer of assets occurs prior to the March 31, 2013, Environmental Services shall be responsible for filing with the Commission a report of gross operating revenues derived from intra-Kentucky business for the year ended December 31, 2012. This report shall reflect the gross operating revenues derived from all sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions.

8. Upon its acquisition of the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions, Environmental Services shall:

a. When submitting to the Commission a financial and statistical report, as described in Administrative Regulation 807 KAR 5:006, Section 3, file a report that reflects the operations of all the sewage treatment and collection facilities serving the Golden Acres and Great Oaks Subdivisions.

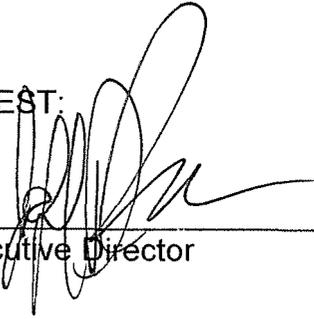
b. Maintain its records in such a manner to permit it and the Commission to determine the revenues from and costs related to the operation of the facilities that serve each subdivision.

9. Any documents filed pursuant to ordering paragraphs 1, 2 and 4 of this Order shall reference the number of this case and shall be retained in the utility's general correspondence file.

By the Commission

ENTERED #
NOV 19 2012
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

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